

- III. Claims 59-60, drawn to an apparatus for attaching molecular moieties;
- IV. Claims 61-62, drawn to a method for attaching molecular moieties;
- V. Claims 63-71, drawn to an apparatus for assaying a sample; and
- VI. Claims 72-80, drawn to a method for assaying a sample.

Applicants elect the claims of Group I, *with traverse*, for the reasons that are addressed under "REMARKS."

Applicants also point out that claims of Groups I and II are drawn to a device *comprising* a substrate and not to "a device *consist of* [sic] a substrate," as indicated in page 2 of the Detailed Action. Section 2111.03 of the MPEP provides that transitional phrases such as "comprising" and "consisting of" define the scope of a claim with respect to whether any unrecited elements are excluded from the claim. Accordingly, any searching and/or examination efforts undertaken by the Examiner regarding the claims of Groups I and II should be carried out using an open-ended, not a closed-ended, claim construction.

**ELECTION OF SPECIES:**

The Examiner has also required election between the following species covered by generic claims 1-5, 19-49, 54, and 56, as follows:

- (1) Claims 6-10, drawn to temperature;
- (2) Claims 11-18, drawn to chemical concentration;
- (3) Claim 55, drawn to hybridization;
- (4) Claim 57, drawn to a suitable condition for attaching; and
- (5) Claim 58, drawn to no suitable condition for attaching.

Applicants elect species (1), without traverse.